89- 1460

Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1989

BETSEY WARREN LEBBOS,

Petitioner

vs.

SAN JOSE MUNICIPAL COURT

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BETSEY WARREN LEBBOS
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January 21, 1990

Petitioner Attorney
Pro Se

QUESTIONS PRESENTED

1. May a state imprison a validly licensed attorney for not " actively " associating with a state bar association, beyond the payment of dues, or do principles of freedom of association, speech, belief, opinion, thought as addressed in Lathrop v. Donohue, 367 US 820, 6 L. Ed. 2d. 1191, 81 S. Ct.1826 (1961), and the Sherman Anti-Trust Act void state statutes which seek to compel "active" enrollment with a bar group, other than pay it dues, by imprisoning licensed attorneys if the bar group involuntarily enrolls the attorney as " inactive " in membership with their group ?

2. Does a state muncipal court judge have jurisdiction to order an attorney not to use any of her valid licenses to practice law in state courts and the United States Courts, or do the principles of Ex Parte

Robinson 19 Wall. 513 (1873); Bradley v.Fisher, 13 Wall. 335, 20 L. Ed. 646 (1870), require that due process of law requires action, and for causes of misconconduct, by an attorney's admitting courts ?

3. Do the principles of Eubank v.Richmond 226 U.S. 142 prohibiting delegation of legislative authority to private persons void a statute ordering a state bar association to create a state bar court ?

4. May a state pass statutes and rules allowing a non-lawyer or lawyer volunteer of a trade group to enter "orders" without notice or hearing, depriving a licensed attorney of the right to use their valid licenses to practice law, by claiming to make them " inactive" in membership with the trade group ?

5. Is the standard of " conduct posing a substantial threat of harm to the inter-

ests of the Public," as grounds for " inactivity," by a bar volunteer, overly broad, both on its face and as applied to Freedom of speech and privileged conduct, and/ or is the standard unconstitutionally vague ?

6. Is allowing a volunteer of a bar association the right to take the right to work of lawyers for " conduct posing a substantial threat of harm to the interests of the Public," an unlawful delegation of Public policy matters to a private person ?

LIST OF PARTIES

The parties in the Petition for hearing of Denial of Habeas Corpus are as follows:

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SAN JOSE MUNICIPAL COURT
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A courtesy copy is also submitted to the following:

JUSTICES OF THE SUPREME COURT
California Supreme Court
350 McAllister Street
San Francisco, Ca. 94102

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No._____

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PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF CALIFORNIA

Your Petitioner Attorney Betsey Warren Lebbos respectfully prays that this Court issue its Writ of Certiorari to void uncontitutional restraints on an attorney's right to use her valid licenses to practice law granted throughout the United States, said restraints issued by a state municipal court judge, on conviction of a newly created misdeameanor, ordering an

attorney not to use her valid licenses to practice law throughout the United States for three years, although the attorney is neither suspended nor dis-disbarred. (1) Appendix, p. 4.

All references hereinafter, unless otherwise indicated, are to provisions of the California Business and Professions Code. The right to practice law is from the licensing from a state supreme court, and not from a bar association. Sections 6064, 6078. A new criminal statute makes it a crime to practice law if an attorney is involuntarily enrolled as inactive in California state bar membership. (2)

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(1) People v. Lebbos, San Jose Municipal Court, Santa Clara County, Case no. C 8914178.

(2) Section 6126 (b),1988, provides,"Unauthorized practice; advertising or holding out; penalties, (b) Any person who has been involuntarily enrolled as an inactive member of the state bar...and thereafter holds himself or herself out as practicing or otherwise entitled to practice law is guilty of a crime punishable by imprisonment in the state prison or county jail."

Involuntary inactivity is not related to dues payment. Appendix 2-3. Nor is it related to any findings of professional misconduct, suspension or disbarment. Appendix, p. 1.

The issue is whether an attorney's first amendment rights of freedom of association, belief, speech, and opinion are violated by forcing them, under pains of imprisonment, to associate "actively" with a private trade group, as a condition of using her unrestricted licenses to practice law, and to believe in and swear to the trade group's state bar court of opponent and competitor opponents. refer footnotes 4-8.

California has passed new statutes and rules delegating use of valid state supreme court licensing of " Court Officers," to any private opponent or competitor vol-

unteer of the state bar association. (3)

Your Petitioner Attorney requests this Court hear and determine the first attempt in the United States to place attorneys under the control of their own private opponents and competitors and cause their imprisonment, and the constitutionality of compelled " active" enrollment, other than pay it dues, with a state bar association run and controlled by attorney's opponents and competitors, and forcing allegiance to

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(3)
Ca. Business and Professions Code sec. 6001, 6002, 6004, 6005, 6006,6007 (c),6007 (d), 6007 (e), 6007 (f),6007 (g),6007 (h), 6086.5, 6079.1, 6125, 6126 (b), Art.6, sec. 9, Ca. Constitution, State bar rules of procedure,(1989), rules 100, 789-799.

The Chairman of the Senate Committee on Businesses and Professions, Senator Montoya, has been indicted by the Federal Grand Jury and is on trial on 12 criminal counts of demanding cash for legislation. The charges are extortion, racketeering, and money laundering.

it's private state bar court. (4)

This Petition to review, by way of Habeas Corpus, the placement of judicial power in any volunteer of the trade group to take the right to work of any licensed lawyer, without notice or hearing, and with no right to raise any legal issues, and imprison their opponents and competitors, is the natural result of the political, lobbying, and claimed statutory activities, whose constitutionality, without

(4) Sections 6010-6015 provide the state bar is governed by 22 private persons, 16 lawyers and 16 non-lawyers, known as the " board of governors." Section 6086.5, in effect from 1985-1988, provided," The board of governors may establish one or more committees, known as the state bar court, to act in its place and stead." From 1962 to 1985, this statute provided, " The board of governors may establish one or more committees, known as disciplinary boards." In 1985, the state bar also amended section 6007 to empower it to make attorney's inactive, for other than involuntary treatment or confinement, but as " harms to the Public." In 1988, 6086.5 was amended to now provide, " The board of governors shall create a State Bar Court to act its place and stead...."

the consent of automatic members, is addressed in Keller v. state bar, United States Supreme Court, docket no. 88-1905, now pending. This Petition is the natural extension of that case.

Petitioner Attorney respectfully requests this court review the order denying a hearing on the Petition for Habeas Corpus entered January 3, 1990 by the state supreme court, and declare the new criminal statute unconstitutional and void the restraints on the Petitioner Attorney's rights to work and use her valid licenses to practice law from her admitting courts. Appendix, p. 5.

I.

OPINIONS BELOW

The state supreme court upheld the constitutionality of the civil involuntary enrollment statute in Conway v. state bar, 47 Cal.3d. 1107. Appendix, p. 6-27. Peti-

tioner Attorney's Petitions to void the ex parte inactivity in her case, to void her opposing party and counsel, state bar, bringing frivolous proceedings, invading her freedom of speech, and the Petitions, including their denial of Habeas Corpus, to declare the criminal statute unconstitutional and a violation of the Sherman Anti-Trust Act, have all been denied. (5)

The Appellate department of the Superior court denied the Petition for Habeas

(5) The Petitions denied : to disqualify the state bar as interested opposing counsel, Ca.Sup.Ct. nos. S005630, S006672; to void the private state bar court, Lebbos v. state bar, Ca.Sup.Ct.no.S008517; to void the ex parte inactivity, Lebbos v. state bar, Ca.Sup.Ct.no.S009045; to process the underlying disciplinary matter Lebbos v.state bar, Ca.Sup.Ct.no.S009238; to review the ex parte inactivity statute, Lebbos v.state bar, Ca.Sup.Ct no.S009842; to rule on the criminal statute's unconstitutionality Lebbos v.state bar,Ca.Sup. Ct.no. S011594, United States Supreme Ct. no.89-5950; and denial of the Petition for Habeas Corpus challenging preventing the Petitioner Attorney working in the entire country, when she has never been found guilty of any misconduct, Lebbos v. San Jose Municipal Ct, Ca.Sup.Ct.no. S012801.

Corpus, Appendix p. 28-29. The Court of Appeals for the Sixth District denied a Petition twice. Appendix, p. 30-31. The state supreme court denied a hearing on the Petition for Habeas Corpus January 3, 1990. Appendix p. 5. The Petition to the state supreme court is appended hereto at Appendix p. 32-37.

The Petition to the Court of Appeals is attached hereto at Appendix p. 38-50.

II.

JURISDICTION

The jurisdiction of this court is invoked under 27 U.S.C. s. 1257 (3), and based on Konigsberg v. State bar of California, (1957) 353 U.S. 252; Largent v. Texas, 318 U.S. 418 (1943), and Lawrence v. State Tax Commission, 286 U.S. 276, 282-283, where the denial of removal of the restraints on liberty necessarily sustains the state statutes against claims

of violation of United States Constitutional rights.

United States Supreme Court rule 19 (a) is invoked where a state court has decided Federal questions of substance not heretofore determined by this court, and, as to Federal issues already decided by this court, it has decided them contrary to the rulings of this Court.

This Petition for a Writ of Certiorari is docketed with this Court within 90 days from the denial of the Petition for Hearing of the denial of Habeas Corpus by the state supreme court, made and entered January 3, 1990. (Appendix, p. 5)

III.

CONSTITUTIONAL AND SHERMAN ANTI-TRUST ACT PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

Amendment 1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of

the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V." No person shall be deprived of life, liberty, or property, without due process of law."

Amendment XIV. " No state shall make or enforce any law which shall abridge the Privileges and Immunities of citizens of the United States nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its'jurisdiction the equal protection of the law."

Article I, section 10, clause 1. No State shall pass any Bill of Attainder, ex post facto Law, or Law impairing the obligation of Contracts.

Article IV, s. 2. 1. The Citizens of each state shall be entitled to all Privileges and Immunities of Citizens in the several states.

Article IV,section 2: " This Constitution, and the laws of the United States which shall be made in pursuance thereof..shall be the supreme Law of the Land; and the judges in every state shall be bound there by, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Article IV.s. 4." The United States shall guarantee to every State in this Union a Republican Form of Government and shall protect each of them against invasion. "

THE SHERMAN ANTI-TRUST ACT

15 U.S.C. section 1

Every contract, combination, in the form of Trust, or otherwise, or conspiracy in restraint of Trade or Commerce among the several states, is declared to be illegal.

The state statutes are set forth in the body of this Petition.

IV.

STATEMENT OF THE CASE

The Petitioner is an attorney admitted and licensed to practice law for 18 years. She has no disciplinary record, no mal-practice, and no client complaints in eighteen years. Her license to practice law was granted in 1975 by the state supreme court of the state of California and authorizes her to practice law in all the courts of the state. Appendix, p. 1. She is neither suspended nor disbarred. She paid her active state bar dues,

Appendix p. 2-3.

Your Petitioner is and has been the party opponent since 1986 in on-going civil litigation with the state bar concerning their practices unrelated to any disciplinary matters concerning the attorney. Lebbos v. State bar, Sixth Appellate District Court, docket no. H003047 (decision for attorney and against state bar May 11, 1989), and Lebbos v. state bar, First Appellate District Court, docket no. A044660 (suit for refusal to stop embezzlements by bar politicians in exchange for votes and dues)

In 1986 the Petitioner attorney was the victim of mail theft and embezzlements through an unlawful change of address by a debt collection attorney receiver appointed by the local Superior Court. He is now in jail. Lebbos v. Judges, Santa Clara

Superior Court, 833 F. 2d. 810 (1989) (Ninth Circuit).

The defendant attorneys complained to the state bar the Petitioner Attorney sued them. Appendix,p.52. As also opposing counsel and party in on-going Civil Rights litigation, the state bar combined with these Federal Court attorney defendants. They then brought their charges before an alleged "state bar court."(6) Appendix,p.52.

Defendant Attorney Miller then sponsored a motion with the local bar for the state bar to continue to handle discipline and for it to obtain more mandatory dues. Appendix, p. 51. On their face, almost all of their charges concern freedom of

(6) Refer footnote 4 for private composition of state bar board. Sections 6010-6013. Under Eubank v.Richmond, 226 U.S. 142 section 6086.5 delegating to these private persons the right to create their own private court is an unlawful delegation of public power to private persons, under the fifth and fourteenth amendment Due Process clauses, US Constitution.

speech. Appendix, p. 53.

The attorney refused to swear oath to the alleged " state bar court." (7)

The " Courts" enumerated in the state Constitution are "the state supreme court, the courts of appeals, superior courts, municipal courts, and the justice courts." Art. 6, sec. 1, Ca. Consti. 24 years ago the People deleted in their Constitution any legislative authority to create any Courts. Art. 6, section 1, Ca. Consti.

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(7) She stated at the disciplinary hearing the following: " The voters of the State of California have not empowered this entity to call itself State bar Court. All these proceedings are void ab initito." (SB " Court " proceedings, p. 3016: 25-28, 3017: 1-2); " The Entity maintaining these proceedings does not exist. It calls itself a State Bar Court. By law, under the California Constitution, they are not empowered to call themselves a State Bar Court. The State Bar Court is void, it has no authority to compel anybody to testify or appear or issue any subpoenas inasmuch as it is a non-existent entity." (3015: 20-25, 3016: 1; " You have no authority to ask me any questions whatsoever. The State Bar Court is non-existent, it is

An attorney's oath of office is stated in section 6067, as follows:" Every person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California." refer Appendix p.1.

Footnote 7 (continued)

void, it is a fraud on the public for the State Bar to call itself a court when it is an administrative body and has no authority. All of these proceedings being main tained in the name of State Bar Court is a fraud, rendering all of these proceedings any attempt to compel anybody or any lawyer, or any witness throughout the entire state to come in here on any charge is void by reason of the fact you are no court.The entity is non-existent" (3021: 8-18);"Furthermore,I refuse to submit to the general jurisdiction of a void entity, as well as an entity that is my opposing counsel and party in two on-going litigations that precedes this, although my record is total ly clean" (3016: 5-9); " These proceedings have been maintained by an entity that calls itself the state bar court. In accordance with Article 5 (sic -6) of the California Constitution, the only courts that are created in the state of California are created by the California Constitution. And the state bar has not been created by the California Constitution. It passed a statute claiming that it could
(continued next page)

Thus, the issue of this court's decision in Norton v. Shelby County, 118 U.S. U.S. 454, 6 S. Ct. 1121, 30 L. Ed. 178, wherein this court stated the acts of a de facto court are void, was presented. (" for the existence of a de facto officer, there must be an office de jure

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Footnote 7 (continued)

call itself a court, which is a fraud on the public. As such, any proceedings maintained by this thing calling itself a State Bar Court, when it is not a Court, is a fraud on the Public and is void." (3000: 8-17); " I have indicated I have refused to take the oath and to submit to the jurisdiction of an entity fraudulently calling itself State Bar Court that has commenced these proceedings as my opposing party and counsel. As a result, you have no jurisdiction over me, ..." (3011: 24-25, 3012: 1-4); " You are void, there is no State Bar Court, it is a fraud on the public. All the papers that say State Bar Court, there is no State Bar Court; ergo, you are not a tribunal or entity. You have no authority to issue any subpoenas since you do not exist" (3104: 2-6); " I refuse to submit to the general jurisdiction of this entity calling itself a State Bar Court when no such entity exists. I have refused to submit to the general jurisdiction of this entity by reason of

(continued next page)

...Where no authority exists, the pre-

Footnote 7 (continued)

the fact that it is void, it is my opposing party and counsel..." (3112: 7- 12); " The law is they don't exist, because they have no authority to subpoena or compel them to testify" (3014: 13-17); " The State Bar Court is void, they don't exist; that is an alleged entity maintaining these proceedings, it is void, the subpoenas are void on me" (3014: 13- 23-25); " As I previously indicated, this entity that purports to be a State Bar (sic-State bar Court) is void. It has not authority to ask any questions of any witnesees, or maintain any proceedings, or misuse attorney's dues for its own corrupt purposes" (3018: 1-5); " There is an additional ground on all these objections. The state bar has no subject matter jurisdiction over any of these charges, every one of these charges is beyond the purview of professional conduct of an attorney, and it was known by the State Bar that they have no subject matter jurisdiction over any of these charges, as well as the fact they are void. There is no State Bar Court, the entity is non-existent; ergo, they were never passed by state bar amendment; (sic-constitutional amendment); ergo, there is no State Bar Court. All proceedings entertained in State Bar Court in the name of the State Bar Court are void, as well as the attempt to compel any lawyer, or any witness to appear here, as well as the fact you are disqualified as prosecutor from inquiring of me of and concerning any matters since I am your

(continued next page)

tended officer is merely a usurper, to whose acts no validity can be attached... Norton v. Shelby County, supra, at p.449)

Although Norton v. Shelby County, supra holds a state determines it's courts, no state court was ever permitted to hear the voidness of the state bar court, before first one of it's volunteers, who was not competent, recommended disbarment, and then another one of it's volunteers, ex parte, without notice or hearing, purported to make the attorney " inactive," then have her imprisoned as a criminal. (8)

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(7) (continued from prior page)
opposing counsel and party in the two ongoing litigations that precede this, even though my record as an attorney is totally clean for 17 years" (3023: 5-25,3024: 1-5)

(8) The state bar may have one solo volunteer sit in any proceeding.Section 6079(c) state bar rules of procedure,rules 100,558 450. The volunteer is described in state bar rule 100," State Bar Court," The State Bar Court consists of members of the State Bar and non-lawyers appointed by the Board of Governors (of the state bar) and two non-lawyers appointed by the Governor.
(continued next page)

The voidness of proceedings maintained by a non-existent court, and an attorney's duty to support her and 28 million state citizens' rights to vote to create their courts, by refusing to participate or take an oath to a void court, are serious constitutional issues presented to the solo

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(8) (continued)

The foregoing shall be of officers of the State Bar Court and shall be known as referees..." Rule 790, Appointment of Designated Referees," provides, "involuntary inactive orders,"The Presiding Referee of the State Bar Court shall designate a panel of referees of the Hearing Department, who shall sit as single member units and who may order the involuntary inactive enrollment of an attorney ..." Section 6079 (b) permits the Presiding referee to appoint one retired judge to hear disciplinary proceedings,instead of the three man required panel. Although the one volunteer's disciplinary recommendation is reviewed by the review board of the "state bar court," before the recommendation of the state bar may be sent to the state supreme court, rule of procedure 450, section 6078, which issues the only order after De Novo review,inactivity may be done by only one non-lawyer with no rights to any review before the taking. Conway v.state bar, 47 Cal.3d.1107.

volunteer in the disciplinary proceeding. See Harley v. Schuyvill 476 F. Supp. 191 (E.D. Pa. 1979), where " the refusal to perform an unconstitutional act is a " separate right secured by the (United States) Constitution." (9)

The Nuremburg trials bear witness a professional with a special oath to the People may not just claim to be following orders. An attorney with an oath to the People must, no matter what, fulfill that oath to support the People and their state and United States Constitutions.Sec.6067.

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(9) What does an attorney's oath to the People and their Constitutions mean ? Does it not mean an attorney is obligated to refuse to cooperate with a private group usurping the People's constitutional rights to vote and refusing to recognize or cooperate with it's void court never voted on by the People ? If an attorney appears and defends before a void entity, swears to it, then they are violating their oath to the People and their Constitutions and assisting the destruction of the People's right to vote.

Petitioner Attorney submits the state bar court statute is in direct violation of the People's Constitutional rights to vote to create their own courts, and is an unlawful delegation of public power to private persons.refer footnotes 4,6,7,9.

Other Constitutional issues were raised that barred the disciplinary proceedings, the charges, and the jurisdiction of this alleged " state bar court,"and any claimed findings and recommendation of the solo volunteer. (10)

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(10) The charges brought under the " Offensive Personality statute" are unconstitutional, on their face, and as applied, as having an offensive personality is not cause for disbarment. (charges 2,4,5,6,7,8) section 6068(f). Said section 6068 (f) states," it is the duty of an attorney to abstain from all offensive personality." Since all of the charges were brought by opposing counsel in on-going litigation, see appendix 51-52, state law (sec.6076, rule 7-104) and the Sherman Anti-Trust Act voided the proceedings. Since all of the charges, except 1 and 9, concern privileged speech, thought, opinion, and conduct, the First

The referee indicated he had no jurisdiction to hear any law, legal or constitutional issues. (11) Article 3, sec. 3.5 Ca. Const. prohibits any administrative agency or board ruling on the constitutionality or unenforceability of any statutes, such as the state bar court statute, the offensive personality statute or any First Amendment issues concerning non-application of disciplinary statutes to Speech.

The solo volunteer recommended disbarment

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(10) (continued)

amendment barred the proceedings, except on charges 1 and 9. The charges and the state bar were barred as a board as the state bar is opposing counsel and party in on-going civil litigation. Gibson v. Berryhill, 411 U.S. 564 (1973).

(11) The referee said," My authority is a very limited one, to hear the charges." (RT:121:31:19-25-33:1-17; disqualification of the entity as her opponent was beyond his "limited jurisdiction to hear the motion,"(RT:124:13-19); he considered he had "no general jurisdiction,"(RT:124:17-21;"no general power," (RT: 22-25); "not a court of general jurisdiction,"(RT:79:7-22 "limited in jurisdiction."(RT:16:21-25,17)

January 9, 1989. He never addressed the constitutional issues presented. Footnote 11 and face of charges indicate they deal with freedom of speech. Appendix 53. Pursuant to rule 562, a motion for a de novo hearing due to physical, mental and legal incapacity of the 83 year volunteer was filed January 19, 1989. (12)

The same day the state bar examiner filed a new proceeding under the involuntary inactive enrollment statute to enforce the 83 year old's recommendation as if it were a final decision. He claimed it was a final decision. The state supreme court makes the only final decision, sections 6077, 6078. The recommendation

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(12) Rule 562, rules of procedure," Within ten days after service of the decision in proceedings which are subject to review by the board of governors...either party may serve and file a written statement,in support of reconsideration... of the decision and by separate document, an application for hearing de novo."

of the volunteer is only advisory to the " Review Board" of the alleged "state bar court". refer footnote 14. It makes it's own independent findings, and conclusions. State bar rules of procedure 450-453. It can not decide the constitutionality of the state bar court or of any the statutes or the applications. Art. 3, section 3.5, Ca. Constitution. It is this Review Board's recommendation that is then sent to the state supreme court. Sections 6077, 6078. The state supreme court undertakes De Novo review. It decides all law issues, as no one in the state bar may do so. Article 3, sec. 3.5, Ca. Const. Brotsky v. state bar of California (1962) 19 Cal. Rptr. 153, 368 P.2d.697.

Thus, the examiner's ex parte representation to the second volunteer that there was a decision of a " state bar court", contained in his Involuntary

Inactive enrollment papers on January 19,1989, was a knowingly false statement. The only decision is that of the state surpeme court, and the only recommendation that is forwarded to them is that of the Review Board of the alleged " State Bar Court." (14)

When the state bar examiner filed his " Involuntary Inactive Enrollrollment"

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(14)

State bar rule of procedure 560 provides,relative to a volunteer's recommendation," except as provided in rule 452, it shall be the final decision of the state bar court unless a timely application or request under rules 450 or 562 is filed with the clerk." Rule 450 provides, " Review,"(a) any party seeking review by the review department of a decision by the hearing department filed under rule 560 shall serve and file with the clerk..a written request for review " within 15 days after service of the hearing department's decision.Rule 453(a) provides,"In all matters before the review department, that department shall independently review the record and may adopt findings, conclusions and a decision or recommendation at (continued next page)

application on January 19, 1989, he knew a motion for a de novo hearing had been filed that day, and that the attorney had ten more days to file with the Review Board.

He submitted those papers, ex parte, without notice or hearing to the attorney, to a second volunteer, Mr. Dewald, who entered the order without notice or hearing.

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(14) (continued)

variance with the hearing department." However,the effect of any action of the Review Department is not that of any decision, but is solely advisory. Section 6078 states,"Power to discipline...," " After a hearing for any of the causes set forth in the laws of the state of California warranting disbarment, suspension, or other discipline the board has the power to recommend to the Supreme Court the disbarment or suspension from practice of members." As stated in Chronicle Pub.Co.v. Superior Court in and For City and County of San Francisco,(1960) 7 Cal.Rptr. 109, 354 P.2d.637,54 C.2d.548, the state bar acts as an arm of the court for the purpose of taking evidence and making its recommendations... and state bar's recommendations are merely advisory in character."

The "Involuntary Inactive Enrollment proceedings," are contained in section 6007. The first sections deal with those who are confined to mental hospitals or institutions. They are not at issue. The section at issue here is section (c). (15)

The state bar examiner claimed the attorney posed a " substantial threat of harm to the interests of the Public," and not to any clients as she has no client complaints and no malpractice. see Lebbos v. state bar, United States Supreme Court docket no. 89-5357. He claimed her speech posed this danger to

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(15)

Section 6007 (c) (1), as added 1988, entitled " Involuntary,inactive enrollment," states, " the Board (of Governors of the State Bar Association) may order the involuntary inactive enrollment of an attorney upon a finding that the attorneys conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public"

the Public. see Lebbos v. state bar, United States Supreme Court, docket no. 89-5357.

Neither the statute nor the rules require notice to the attorney of the involuntary inactive enrollment application. (16) The state bar has exempted itself from the due process requirements applicable to all other state licensing or court procedures. Section 6001. refer reference to this exemption in Keller v. state bar, United States Supreme

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(16) Section 6007 (c) (1) has no notice or hearing requirements. State bar rule 791, entitled," Filing and service of application for involuntary inactive enrollment; setting of hearing," provides " The Office of Trial Counsel shall file a verified application with the Office of the Clerk of the State Bar Court ...Upon filing, a copy of said application with supporting documents, to gether with the notice of hearing, shall be served by certified mail to the attorney at his or her last registered address as reflected in the State Bar membership records ..."

Court, supra, now pending. (17)

Although the separate statute, section 6002, provides service is to be done by certified mail, return receipt requested, (18), the state bar rule violates this statute by providing for solely mailing by certified mail, with no need for receipt, return receipt or proof of receipt. refer footnote 16, state bar rule of procedure 791.

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(17) Section 6001, states, "The State Bar is a public corporation...No law of this state restricting or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof,including but not by way of limitation, the provisions contained in Division 3 (commencing with Section 11000) Division 4 (commencing with sec. 16100), and Part I (commencing with Section 18000) and Part 2 (commencing with Section 18500) of Division 5,of Title 2 of the Government Code, shall be applicable to the State Bar unless the legislature so declares."

(18) Section 6002.1 (c), provides,"the notice initiating a proceeding conducted under this chapter may be served upon the member or former member of the State Bar to whom it is directed by certified mail, return receipt requested...."

The involuntary inactive statute has no hearing requirement, and the state bar rule 792 waives one if the attorney does not request one, even if the attorney is never served. (19)

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(19)
Section 6002.1 provides," The service of the mailing is complete at the time of mailing...." (emphasis added) State bar rule of procedure, rule 792, entitled, " Attorney's Response to Application; within 10 days to protect right to hearing," provides," The attorney against whom the Application for Involuntary Inactive enrollment is directed shall have ten (10) days from the date of service of the application by certified mail to file with the Office of the Clerk, State Bar Court a verified response and a request that the hearing which has been set pursuant to rule 791 be held. Failure to request a hearing by the attorney will constitute a waiver of the right to a hearing." Rule 793, entitled," Circumstances under which Hearing will be held, provides,"Upon the expiration of the ten (10) day period precribed by rule 792,the referee shall conduct the hearing which has been set if; a) the attorney has timely filed a request under rule 792,b) with-in three days (3) of the expiration of the attorney's time to respond as prescribed in rule 792, the Office of Trial Counsel requests that a hearing be held; or c) the referee designated under rule 790 has determined that the previously set hearing will materially contribute to the decision ."

With no service on the attorney, a volunteer entered an order of involuntary inactive enrollment February 14, 1989. (20). He claimed he was a " state bar court." He determined a hearing was not necessary nor was notice to the attorney. Lebbos v.state bar, United States Supreme Court, docket nos. 89-5357, 5950. refer footnote 19, service is complete on mail-

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(20)
State bar rule of procedure, rule 794, entitled, " Decision of Referee; Denial without prejudice," provides, " The referee shall render a decision... which shall be filed in the Office of the State Bar Court and served on the attorney and the Office of Trial Counsel no later than five (5) days after the date set for hearing,if no hearing is held, or no later than five (5) days after the hearing, if said hearing is held...." State bar rule of procedure rule 795, entitled," Notice to attorney and Supreme Court of involuntary inactive enrollment," provides," If the referee orders that the attorney be transferred to inactive status, notice of the involuntary inactive enrollment shall be provided to the attorney and the Supreme Court as provided in Business and Professions Code section 6081."

ing without receipt. This was mailed February 14, 1989 to take effect February 17,1989. Lebbos v. state bar, United States Supreme Court, docket nos. 89-5357, 5950.

At the end of the three day weekend, the Petitioner Attorney was cited for contempt and an arrest warrant issued when she appeared, as scheduled, on February 21,1989 for four of her clients in the Santa Clara Superior Court. She is the first attorney to be charged under the new criminal statute, which took effect January 1, 1989.

The same day the state supreme court issued it's decision in Conway v. state bar, 47 Cal. 3d. 1107, by a 5-2 vote, Appendix p. 6., upholding the civil involuntary inactive enrollment against certain, but limited constitutional challenges. The rationale was the need

to protect the Public quickly, but never addresses how " haste makes waste," as the referees are untrained volunteers and can decide no law, or evidence, nor may these volunteers ever claim to be a " state bar court." (21)

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(21)*

Unlike state agencies with certified administrative law judges, fixed, firm rules, prompt hearings and disposition of all law issues, the California state bar has devised a system where a non-certified state bar employee can bring 57 charges over freedom of speech. Then it takes six months to get a hearing. Then the hearing is before one solo volunteer. He may be senile. He rules he can decide no law and takes five weeks to handle what takes one hour in competent hands. Then another volunteer makes the attorney inactive ex parte. Then it takes another six months for the review board of the state bar court to hear the matter. It takes nine months for it to make it's recommendation. Then it takes another 6 months to a year for the state supreme court to review. In the meantime, the attorney is prohibited from working for years, yet she has been found guilty of nothing, and is a criminal if she protects her clients from these opponents and then imprisoned.

Petitions to declare the state bar court and the involuntary inactive statute and rules unconstitutional on their face, and as applied, were filed with the state supreme court and denied. Lebbos v. state bar, Ca. Supreme Court, docket nos.S009045 and S009842. This court denied review of the issues raised concerning the civil statutes. Lebbos v. state bar, United States Supreme Court, docket no. 89-5370. New constitutional issues and the Sherman Anti-Trust Act were raised concerning the criminal statute, and the state supreme court denied review. Lebbos v. state bar, Ca. Supreme Court, docket no. S011594. A Petition was filed with this court raising issues concerning the criminal statute. Lebbos v. state, United States Supreme court, docket no. 89-5950.

The Petitioner attorney was convicted of the new criminal charge September 14,

1989. Appendix p.4. An appeal is pending. No criminal defense counsel has been appointed as requested. The Petitioner attorney is indigent, due to first, the embezzlements caused by the principles involved in this case, and second, her law practice was bankrupted February 17, 1989 with this " inactive" material. (22)

The municipal court judge sentenced the Petitioner Attorney to six months in jail, then stayed the sentence on condition she use none of her valid state supreme court and Federal court licenses for three years, although none of her admitting courts had restrained her right to appear in their courts as their " Court

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22) refer Lebbos v. Judges, Santa Clara Superior Court, 883 F. 2d. 810 (Ninth Circuit) (1989); People v. Lebbos, Santa Clara Superior Court, Appellate Department, case no. CR1260.

Officer." This Petition is filed to review, by way of the state supreme court's denial of Habeas Corpus, these restraints on her right to work throughout the United States for three years. Refer appendix, p.5,28-end.

REASONS FOR GRANTING THE WRIT

I.

This Court has jurisdiction pursuant to Konigsberg v.State bar of California (1957),353 US 252, as the state supreme court's denial of hearing of the Petition for Habeas Corpus decides the Federal Constitutional and Sherman Anti-Trust Issues In favor of validity and restrains the Petitioner's constitutional rights to work in her profession, with her valid licenses

This Court has jurisdiction to grant relief from a denial of Habeas Corpus, which places immediate, irreparable, and devastating impairment of an attorney's right to work throughout the United States with her valid licenses from diverse state

and United States courts admitting her and licensing her to practice law in their courts as their " Court Officer," said restraints placed by a state municipal court judge, and not by her admitting courts. Fay v. Noia (1963) 372 U.S. 391.

The issue is whether a state court municipal court judge may prohibit a defendant attorney,upon conviction of a misdemeanor, not to use any of her valid and unrestricted licenses to practice law, granted by both state supreme courts and by United States Courts in the federal system, for three years, when the attorney is neither disbarred nor suspended by her admitting courts, and has never been found guilty of any misconduct. Are not the principles of Ex Parte Robinson 13 Wall. 335, 20 L. Ed. 646 (1870), barring a lower court judge from assuming jurisdiction over the right

to practice law of " Court officers," whose right to work is granted by a state supreme court, or the federal courts, and which are not under the jurisdiction of a state court municipal court judge, controlling ?

The state court municipal court judge has interpreted the new California criminal statute, Ca. Business and Professions Code section 6126 (b), to authorize him to order any attorney not to work in their profession throughout the United States, in any state, and in any court, if they are " involuntarily enrolled as inactive in membership with the California state bar association." This would compel all attorneys nationwide who wish to work with any of their licenses,if one of them is from the California state supreme court, to be forced to be " active" with the California state bar association,

other than pay it dues, in order to use any of their licenses in the United States and work in their profession. Pettitoner Attorney submits that the state of California trying to compel licensed attorneys to be " active" members of a state bar association, other than pay it dues, as a condition of working in the United States with their valid licenses, is an unconstitutional restraint on their freedom of association, speech, belief, thought, and opinion, and beyond the jursdiction of a state municipal court judge or the state of California. In re: Ruffalo 88 S.Ct.1222;Ex Parte Garland, 4 Wall.333, 8 L. Ed.370, (1867); Ex Parte Robinson 13 Wall. 335, 20 L. Ed. 646 (1870); Bradley v. Fisher (1870) 13 Wall. 335, 20 L. Ed. 646; Schware vs.Board of Bar Examiners 353 US 232,1 L.Ed.2d 796, 77 S Ct. 752 (1967);

Konigsberg vs.State Bar of California, 353 US 252, 1 L. Ed. 2d 810, 77 S Ct. 722 (1957); Titus vs. Supreme Court of Virginia, 94 S. Ct. 533, 534, 414 U.S. 1034, 38 L. Ed.2d 327, rehearing denied 94 S. Ct. 886, 4124 U.S. 1138, 38 L. Ed.2d 764.

II.

A state statutory scheme that compels licensed attorneys to be " active" members of a state bar association, other than pay it dues, or be imprisoned, raises serious issues of freedom of association, speech, thought, and belief, due process and equal protection of the law

California has devised a system where all licensed attorneys must submit to the political, personal, and legal activities and claims of a state bar association in order to be able to use their valid licensing from the state surpeme court. If they do not agree that the state bar may have it's own private

court,they can not work and face imprisonment for refusal to accept the state bar's claim they de facto license and not the state supreme court. (23)

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(23)
Article 6, section 9 of the California Constitution, provides, " The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this state is and shall be a member of the State Bar ... Ca. Business and Professions Code section 6002, entitled, " members," states, "The members of the State Bar are all persons admitted and licensed to practice law in this state ..." Section 6003, "Classes of members," provides, " Members of the State Bar are divided into two classes: (a) Active members (b) Inactive members." Section 6004, entitled, " Active members," provides, " Every member of the State Bar is an active member until, by action of the board of governors as in section 6007 of this code provided or at his request, he is enrolled as an inactive member.Section 6005, provides," Inactive members are those members who have requested that they be enrolled as inactive members or who have been enrolled as inactive members by action of the board of governors as in Section 6007 by this code provided." Section 6006, entitled, " Retirement from practice; Privileges of inactive members," provides, " Inactive members are not entitled to hold office or vote or practice law..." Those who are enrolled as inactive
(continued next page)

State bar rule 799 requiring an attorney involuntarily enrolled as inactive in state bar membership must petition the alleged state bar court to be enrolled as active in membership means attorneys must submit to a private trade group court of opponents and competitors, and their act-

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(24) (continued)

members * * * as in Section 6007 of this code provided may become active members as in section 6007 provided.."Section 6007(c)(5) provides,"In the case of an enrollment pursuant to this subdivision,the board shall terminate the involuntary inactive enrollment upon proof that the attorney's conduct no longer poses a substantial threat of harm to the interests of the attorney's clients or the public." Section 6125 indicates " no person shall practice law in this state unless he is an active member of the state bar," and section 6126 (b) makes it a crime to practice law if involuntarily enrolled as inactive in membership with the state bar association.

State bar rules of procedure, rule 799 provides, " Petition- Reference to Hearing Panel, " A member who has been transferred to inactive status pursuant to this chapter may petition the State Bar Court to terminate such enrollment. . if the petition is in proper form, it shall be referred to a hearing panel..."

ing as a personal censor of the attorney's work in order to use their valid license to practice law. Refer footnotes 4-8.

This forces an attorney to violate their oath to support the People and their Constitutions, section 6067 and 6068(a). refer footnotes 4-8.

At issue is this court's decision in Lathrop v. Donohue, (1960) 367 U.S. 843, concerning whether an attorney may be forced to associate with, or " actively" enroll with a state bar association, and submit to it's claim to having a private state bar court, when such submission violates the attorney's speech, beliefs, opinion, and her duty to her clients and the Public to support their constitutional right to vote to create their own courts and elect and remove their own judges to their own courts and to oppose a state

legislature, state bar, and state supreme court purporting to destroy those constitutional rights by creating a state bar court never voted on, as required, by the People.

III.

A state statutory scheme that allows one non-lawyer volunteer of a bar association to enter "orders" without notice or hearing, depriving an attorney of her right to use her license to practice law, raises serious issues of the Police power of the state and due process of law

The Petition should be granted as the taking of the right to use a valid license to practice law from a state supreme court by a private volunteer raises serious issues of non-delegation of public power, and interference with the contracts of licensing of supreme courts, as expressed by this court in Eubank v. Richmond, 226 226 U.S. 142 and Schecter Corp. v. U.S., 295 US 495

. The taking without notice or hearing raises issues of fundamental due process

of law as expressed in Wilner v. Committee of Bar Examiners, 373 U.S. 105.

And the taking with no right to raise and have determined any legal or constitutional issues, such as the voidness of the proceedings due to the unconstitutionality of the statute creating an alleged state bar court, charges over Freedom of Speech and privileged conduct brought under an unconstitutional " Offensive Personality" statute claiming it is a disbarable offense to have an " Offensive Personality " and legal bars of no subject matter jurisdiction over pending suits, and a denial of a fair hearing due to physical, mental, and legal incapcity of the volunteer, as well as the disqualification of the state bar as party opponent, means any volunteer takes the right to work of any lawyer and may cause their imprisonment, without the attorney being allowed any

opportunity to have and have determined constitutional, legal, or evidentiary issues, in violation of Gibson v. Berry-hill, 411 U.S. 524.

IV.

A state statutory scheme that permits a state municipal court judge to prevent the use of licenses from state supreme courts and the United States courts raises serious issues of jurisdictional due process of law

This court should hear and determine whether a state can extend it's jurisdiction outside it's state to prohibit use of licensing granted by other state supreme courts and by Federal Courts in the United States, and whether a municipal court judge may impair that licensing by these other courts,or whether such assumptions of extraterritorial jurisdiction by interpretation of a new state criminal statute deny an attorney subtantive and procedural due process of law, under

principles enunciated in Ex Parte Robinson, supra, Ex Parte Garland, (1867) 71 U.S. (4 Wall.) 333, Bradley v. Fisher, Cummings v.Missouri, (1867) 71 U.S. 4 Wall.) 277, and In re: Ruffalo, supra.

V.

A state statutory scheme that a volunteer transfers an attorney from active to inactive state bar membership because of his personal definition of " conduct posing a substantial threat of harm to the interests of the Public," with the volunteer defining his " Public", his "harm," and his "interests," raises serious issues of uncontitututional overbreadth, on its face and as applied, vagueness, and unlawful delegation of Public policy to a private person

Since the criminal statute is based on an order of involutary inactivity in state bar membership being made by a volunteer, calling himself a " state bar court," and based on his personal and uncontrolled definition of " conduct posing a substantial threat of harm to the interests of

the Public," section 6007 (c), are not the controlling principles of facial invalidity due to obvious overbreadth, and/or vagueness, and the principles of non-delegation of public policy matters to private persons, here applicable to void the criminal statute and not allow the state of California to change 672 years of consistent law and take attorney's rights to use their licenses for their freedom of speech. Any review of the underlying charges indicates there are about 57 charges of Freedom of Speech of both clients and their attorney at issue. Appendix, p. 53. See Massachusetts v. Oakes, 105 L.Ed.2d 493, and an identical statutory standard held invalid in Housworth v. Glisson, 485 F. Supp. 29,(N.D. Ga.). See also In re: Snyder, 472 U.S. 634, 105 S. Ct. 2874, 86 l.Ed. 2d. 504 (1985), (an attorney criticizing the

administration of Justice in a court, does not warrant discipline.)

Are attorneys of common understanding and intelligence going to be forewarned that their Speech is " conduct posing a substantial threat of harm to the interests of the Public," as defined by a private volunteer opponent, such that their practices shall be bankrupted overnight and they imprisoned as a common criminal by allowance of such a vague and unintelligible standard ? see Grayned v. City of Rockford, 408 U.S. 104, 108-109, 33 l. Ed. 2d. 222, 92 S. Ct. 2294 (1972)

VI.

The state statute instructing a board of Governors of a trade group to create it's own state bar court raises serious issues of unlawful delegation of public power to private persons

Section 6086.5, providing " The Board shall create a state bar court," which purports to delegate the public power to

create a court in the state to the private membership board of governors of the state bar association, raises serious issues of unlawful delegation of public power to private persons, as held in a similar case in Eubank v. Richmond, supra. May a state legislature delegate the public power to create a court to a group of 22 private citizens ? And when that legislature has already been forbidden by the People to create any new courts ? see footnote 6 describing private composition of the board. If an attorney knows this court is unconstitutional, may they lose their right to work and be imprisoned for refusing to violate their oath to the People and their Constitutions ? see footnotes 7,8,9.

CONCLUSION

Petitioner Attorney respectfully requests that the order of the San Jose

Municipal Court judge prohibiting her from using her valid state and Federal licenses to practice law for three years and her criminal conviction be voided on the basis that the criminal statute is unconstitutional, on its face and as applied.

It criminalizes the exercise of an attorney's freedom to refuse to actively associate with a state bar association, other than pay dues. It delegates judicial power to private persons of a trade group to take the rights to work of their own opponents and imprison them. It does so with no procedural due process of law as there is no service, notice, or hearings required for " inactivity," and the attorney may never raise nor have determined any legal or constitutional issues prior to being subject to a volunteer's order making them a criminal.

It criminalizes the exercise of protected First amendment freedoms of speech, thought, opinion, and belief, by enforcing a standard that is both overly broad and vague on it's face, to wit, " conduct posing a substantial threat of harm to the interests of the Public."

It violates the Sherman Anti-Trust Act Act, as a combination and conspiracy of private opponents and competitors in restraint of the trade and commerce of their competitors and opponents, and is beyond the Police power of the state as not for the Public's health, safety, and welfare, but is a special interest crime for private persons to be able to imprison their own private opponents and competitors.

The criminal statute is unconstitutional, as when read in conjunction with the state statutes purporting to allow a private volunteer to call himself a

" state bar court" and make orders taking rights to work of lawyers, it forces 122,300 California attorneys to violate their oath to support the People and their Constitutional rights to vote to create their own courts, and forces attorneys to let private people create a void court, or be imprisoned for refusal to violate the People's Constitutional rights to vote in the state, and pursuant to Cox v.Louisiana 379 US 536, 13 L. Ed. 2d. 471, 85 S Ct. 453, lets a private person create and define his own personal crime.

RESPECTFULLY SUBMITTED,

January 21, 1990

Betsy Warren Lebbos

BETSEY WARREN LEBBOS
Petitioner/ Attorney

VERIFICATION

I, BETSEY WARREN LEBBOS, am the Petitioner Attorney in this matter. I have read the foregoing and know it's contents to be true, to the best of my knowledge, information, and belief, and made and entered this 19th day of January, 1990 at San Jose, Ca.

Betsey Warren Lebbos

BETSEY WARREN LEBBOS
Petitioner Attorney